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May 23, 2011

BY E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: Manufacturers Railway Company – Discontinuance Exemption – In St. Louis, MO., Docket No. AB-1075X

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find Manufacturers Railway Company's Reply To The Comments of the United Transportation Union and the International Association of Machinists and Aerospace Workers.

Very truly yours,

Paul A. Cunningham
Counsel for Manufacturers Railway Company

Enclosure

cc: All parties of record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1075X

MANUFACTURERS RAILWAY COMPANY
– DISCONTINUANCE EXEMPTION –
IN ST. LOUIS, MO

REPLY OF MANUFACTURERS RAILWAY COMPANY TO THE COMMENTS OF THE UNITED TRANSPORTATION UNION AND THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

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Pursuant to 49 C.F.R. § 1104.13(a), Manufacturers Railway Company ("MRS") hereby replies to comments of the United Transportation Union ("UTU") filed on May 2, 2011 ("UTU Comment") and the International Association of Machinists and Aerospace Workers ("IAMAW") filed on May 3, 2011 ("IAMAW Comment") in opposition to MRS's exemption petition.[1] For the reasons set forth below, the arguments made by UTU and IAMAW do not support the relief requested, and MRS therefore respectfully requests that exemption petition be granted without any labor protective conditions.

Neither UTU nor IAMAW argue that MRS has failed to meet the statutory standard for obtaining authority to discontinue service or that the exemption petition should be denied. And both parties concede that "[u]nder 49 U.S.C. § 10502(g), the Board will not impose labor protection when issuing discontinuance authority for railroad lines that constitute the carrier's entire system unless evidence exists of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits

[1] MRS has previously replied to an opposition statement filed by the Brotherhood of Maintenance of Way – Employees Division ("MRS Reply to BMWED") that made similar arguments to those raised now by UTU and IAM.

over and above the relief from the burden of deficit operations by its subsidiary railroad." UTU Comment at 4; *see also* IAMAW Comment at 1 (concurring with the UTU Comment). UTU and IAMAW nonetheless argue that the Board should impose *Oregon Short Line* labor protective conditions on its approval of the exemption petition because:

(1) the shipper will continue to receive traffic by rail after MRS discontinues all service (UTU Comment at 3);

(2) MRS's corporate parent will allegedly "realize substantial financial benefits" (UTU Comment at 3-4); and

(3) the "equities" weigh in support of imposing labor protective conditions on this transaction because the exceptions to the general rule were not intended to apply to the circumstances present here (IAMAW Comment at 1-2).

Those arguments are legally irrelevant under the settled precedent of the ICC and the STB, and should be rejected. MRS respectfully requests the Board follow its settled precedent and grant the exemption petition without labor protective conditions.

1. **UTU is wrong on the facts and the law regarding MRS's entire system discontinuance**

UTU argues that because Anheuser-Busch, Inc.,[2] a shipper that receives rail service from MRS, will continue to receive rail service via an unrelated third-party noncarrier switching provider, there will not be a "discontinuance of all service" but "merely a change in the way switching is performed for Anheuser[-Busch]." UTU Comment at 3. UTU argues that this "easily distinguish[es]" this proceeding from others in which the STB or ICC has not imposed labor protective conditions on entire system abandonments. *Id.* at 3-4. UTU is wrong on both the facts and the law.

[2] UTU is mistaken about the relationships in MRS's corporate family. As MRS's petition makes clear, Anheuser-Busch, Inc., which operates the brewery and is a shipper on MRS's system, is not a parent company to MRS. Anheuser-Busch, Inc. and MRS are both wholly-owned subsidiaries of Anheuser-Busch Companies, Inc. MRS Petition at 2.

First, UTU does not dispute either that MRS itself would completely discontinue service over its entire system or that, under existing agency precedent, no labor protective conditions would apply to such a transaction. UTU does not and cannot provide any evidence that MRS or anyone affiliated with MRS will continue conducting rail operations after MRS discontinues service. UTU is thus wrong as a factual matter that this is not an entire-system discontinuance.

UTU is also wrong about the law. UTU attempts to distinguish this entire-system discontinuance from others where no labor protective conditions were imposed based on the fact that here, the only currently active shipper will receive contract switching service from an unrelated third party. But this distinction is irrelevant as a legal matter. Here, MRS will cease all operations, whether in common or private carriage, when it discontinues service. Yet, as MRS noted in its reply to BMWED, even where a carrier discontinues or abandons service over its entire system, and then continues to operate a part of that system as a private spur line, no labor protective conditions will be imposed. *See* MRS Reply to BMWED at 6 n.4 (citing *Almono LP—Abandonment Exemption—In Allegheny County, PA*, STB Docket No. AB-842X (STB served Jan. 12, 2003); *see also Sierra Pacific Indus. – Abandonment Exemption – in Amador County, CA*, STB Docket No. AB-512X, slip op. at 8 (STB served Feb. 25, 2005) (abandoning carrier's conducting other rail operations in private carriage not relevant to analysis of whether labor protective conditions should be imposed on abandonment of entire line operated in common carriage).

Moreover, whether a corporate parent of a carrier seeking to abandon or discontinue service over its entire line would continue to receive service from an unrelated carrier "is not relevant" to the analysis of whether labor protective conditions should be imposed on an abandonment or discontinuance constituting the entire system of a carrier. *See* MRS Reply to

BMWED at 8-9 (citing *Northampton & Bath R.R. – Abandonment Near Northampton & Bath Junction in Northampton County, PA*, 354 I.C.C. 784, 786-87 (1978)). UTU is thus wrong that this proceeding is distinguishable from other entire-system abandonments or discontinuances in which no labor protective conditions were imposed.

Finally, UTU fails to explain why a non-carrier shipper that wishes to continue to receive traffic by rail after an entire-system abandonment should be made responsible for the labor obligations of the rail carrier that formerly provided service, regardless of whether or not the two companies are related. Under UTU's logic, a shipper served by two carriers could be made responsible for the labor protective conditions of one of them if it continued to receive rail service from the other. Nothing in ICCTA, the STB's regulations, or ICC/STB precedent suggests that shippers have such a duty, and UTU cites no authority in support of this position.

2. UTU's contention that MRS's corporate parent will realize substantial financial benefits is legally irrelevant

The STB's precedent is clear: where a carrier that is abandoning or discontinuing service over its entire system, labor protective conditions will be imposed only where its corporate parent will "realize substantial financial benefits ***over and above*** relief from the burden of deficit operations by its subsidiary railroad." *See Sierra Pacific Indus.*, slip op. at 8 (emphasis added). Even though it has not attempted to show any benefit to MRS's corporate parent[3] ***over and above*** the relief from deficit operations, UTU nonetheless asserts that "labor protection . . . should rightly be imposed." UTU Comment at 4. UTU provides no reason why the governing law should not apply.

[3] As discussed above, UTU's use of "Anheuser" to refer to the brewery as the corporate parent of MRS is incorrect. Moreover, UTU is incorrect that "the parent company of MRS stands to benefit financially from this transaction by . . . reducing its labor expense," *see* UTU Comment at 4, because the parent company of MRS has no railroad labor expenses.

MRS demonstrated in its petition and reply to BMWED that the only financial benefit of the transaction would be "relief from the burden of deficit operations." MRS Petition at 7; MRS Reply to BMWED at 9-10. UTU cannot and does not contest that this is the only financial benefit that will result from MRS's discontinuance. Accordingly, under the STB's settled precedent, there is no legally sufficient predicate for the imposition of labor protective conditions in this proceeding.

Under the governing law, the realization of substantial financial benefits exception could be implicated, for example, where there is evidence that the corporate parent has "a firm commitment for the purchase of the line at a price substantially higher than salvage value." *See* MRS Reply to BMWED at 9 (citing *Washington & Old Dominion R.R. Abandonment of Entire Line in Virginia*, 331 I.C.C. 587, 602 (1968), *affirmed* 287 F. Supp. 528 (E.D. Va. 1968)). But no such evidence exists in this proceeding. UTU is therefore incorrect that the second exception applies in this case.

3. IAMAW presents no reason for the Board to overturn decades of settled precedent to achieve IAMAW's goals

IAMAW asserts that because the ultimate corporate parent of MRS is "a highly profitable multinational corporation," the "equities of the matter" weigh in favor of imposing labor protective conditions. This argument, however, ignores decades of "well-settled" ICC and STB precedent holding that "employee protective conditions *will not be imposed* when a carrier abandons or discontinues service over its entire common carrier system unless the evidence shows the existence of" either of two exceptions discussed above. *See Sierra Pacific Indus.*, slip op. at 8 (emphasis added). Some of those entire-system abandonments or discontinuances have involved ultimate corporate non-carrier parents that were large, profitable corporations. In fact, in *Northampton & Bath*, the most widely cited case for the proposition that labor protective

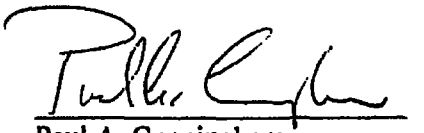
conditions will not be imposed on entire system abandonments or discontinuances, the ultimate corporate parent was US Steel. Contrary to the contention of IAMAW that the exceptions to labor protection were "never intended to apply . . . where the corporate parent is more than capable of providing the labor protection," the ICC determined that no labor protection would be imposed in the *Northampton & Bath* proceeding. *See* 354 I.C.C. at 787. In that proceeding the ICC also declined to reach the issue of whether alternative benefits proposed by the abandoning carrier were as good as *Oregon Short Line* benefits, because it had concluded that "Commission-imposed protection is not appropriate here." *Id.*

Like UTU, IAMAW fails to explain why the "equities" require the result it seeks. It neither cites any authority nor offers any reason why a shipper – regardless of its level of profitability – could or should be made responsible for the labor obligations of a carrier from which it formerly received service, regardless of whether or not the shipper and carrier are related companies. In short, IAMAW cites no authority in support of its contention that the exceptions to the rule regarding labor protective conditions in entire-system abandonments or discontinuances "was never intended to apply" to the circumstances present here, and the precedent of the ICC and the STB is to the contrary.

CONCLUSION

The arguments made by UTU and IAMAW regarding labor protective conditions are without merit, contrary to settled agency precedent, and should be rejected. MRS respectfully requests that the Board grant the exemption petition without imposing any labor protective conditions.

Respectfully submitted,



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May 23, 2011

CERTIFICATE OF SERVICE

I certify that I have this 23nd day of May, 2011, served copies of the foregoing Reply To The Comments of the United Transportation Union and the International Association of Machinists and Aerospace Workers upon the following parties of record in this proceeding by first-class mail or a more expeditious method.

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